

Post 4/4/95 The McDonald's Coffee Spill Case

As the son-in-law of Stella Liebeck, the lady burned by McDonald's coffee, I read with great interest Liz Spayd's column on tort reform [Outlook, March '5]. As a conservative professional, I understand the business argument of exposure to suits. Unfortunately, business is not blameless in this arena. Sometimes accidents happen, and insurance should quickly clear the matter.

In Mrs. Liebeck's case, she attempted settlement for about six months before retaining a lawyer. She had asked for medical and other expenses (\$15,000 to \$20,000) and that the company check the proper functioning of the coffee machine or to reassess its serving temperature so others would not be burned. Her \$10,000 in medical expenses, which had to be returned to Medicare so we would not be footing the bill through taxes, was met by a letter from the company—which I saw—with an \$800 offer. The punitive portion arose at trial, when the judge allowed it because of the callousness McDonald's had shown.

I was present when McDonald's product assurance manager testified in open court that he had known for years of the damage his product caused, knew his customers did not know of the hazard and had done nothing to study or solve the problem in the face of an admittedly incomplete list of more than

700 burns. Based on this callous attitude, the jury awarded a token two days' of McDonald's coffee sales—\$2.7

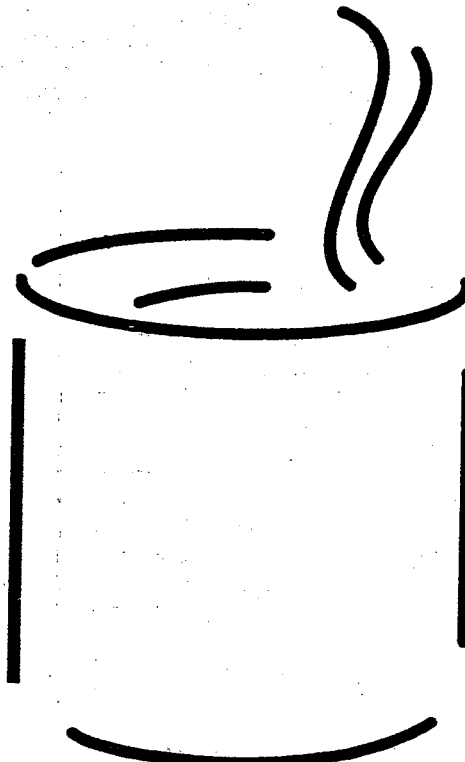
beck's case to be heard. Mrs. Liebeck's lawyer told me during the trial that the judge had received a letter from McDonald's lawyer saying the company wanted a verdict and would not settle. In his rejection of McDonald's appeal of the judgment, the judge noted that the company's attorneys had not attended court-ordered mediation. Why did McDonald's lawyers delay settlement? Did they really hope she would die, as someone on their side was alleged to have said?

I know of other cases in which the business delayed to drive up legal costs for the individual. The problem is not the contingency lawyer, who is paid only upon closure. It is the corporate lawyers, who draw hourly wages.

I agree with Ms. Spayd that one should not be allowed to sue indiscriminately. This is also true for the government. Where is the bill to limit the government and business suits to defendants directly responsible?

It also makes sense that, to allow both sides to be heard, no confidentiality agreements should be allowed. In the McDonald's case, the company would not settle without gagging Mrs. Liebeck, but then it put out a slanderous national campaign against her. As noted in an Associated Press report, the American Tort Reform Association—which is sponsored by McDonald's and other large corporations—bought radio ads using my mother-in-law's case as an example of a frivolous suit. With no gag orders, the true frivolous cases will be exposed, "victims" making a living by suing will become known and corrupt businesses will either fix their products or close. Further, it seems reasonable not to let a person sue if he is breaking the law in the use of the product or is using it in a manner well outside the reasonable norms.

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million—in punitive damages.

Businesses can avoid these suits by taking responsibility for their products. In this case, after a couple of serious burns, McDonald's could have turned down the temperature. Had it done that, there would have been no punitive damages. If punitive awards are capped to a set amount, an arrogant large company will just include them in the cost of doing business. Setting limits on punitive damages as some percentage of annual sales of the offending product may be a reasonable compromise that is more fair to injured parties and business alike in the few cases in which punitive damages are proven.

Ms. Spayd's comments on business having only a fraction of the rights of criminals belie the facts. Mrs. Liebeck had to prove McDonald's liability. It took two years for Mrs. Lie-